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10 Attorneys for Plaintiff
11 CHURCH OF SCIENTOLOGY OF CALIFORNIA

RECEIVED
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HUB LAW OFFICES

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

15 CHURCH OF SCIENTOLOGY OF) Case No. C 420153
CALIFORNIA, a California)
16 corporation,) SUPPLEMENTAL REPLY IN
Plaintiff,) SUPPORT OF MOTION TO
17) ENFORCE SETTLEMENT AGREEMENT;
vs.) DECLARATION OF RANDALL A.
18) SPENCER
GERALD ARMSTRONG; DOES 1)
19 through DOE 10, inclusive,)
20 Defendants.) DATE: December 23, 1991
DEPT: 56
21 GERALD ARMSTRONG,)
22 Cross-Complainant,)
23 vs.)
24 CHURCH OF SCIENTOLOGY OF)
CALIFORNIA, a California)
25 corporation; L. RON HUBBARD;)
and DOES 1 through 100,) DISCOVERY CUT-OFF: None
26 inclusive,) MOTION CUT-OFF: None
Cross-Defendants.) TRIAL DATE: None

27
28

1 I. INTRODUCTION

2 Plaintiff's motion to enforce the settlement agreement with
3 Armstrong was served upon him on October 3, 1991. Armstrong's
4 Opposition was served on November 18, 1991, and plaintiff's Reply
5 was served on November 22, 1991. Now, one week before the
6 December 23 hearing, Armstrong served upon plaintiff's counsel a
7 "supplemental Opposition," which raises an entirely new issue;
8 namely, whether this Court has jurisdiction to hear plaintiff's
9 motion. Armstrong's counsel has offered no excuse whatsoever as
10 to why this issue could not have been raised in Armstrong's
11 original Opposition, or an excuse for raising the issue 28 days
12 after serving his original Opposition. These litigious tactics
13 have only increased the Court's burden, as well as the burden to
14 opposing counsel. Plaintiff's counsel has had three days to
15 respond to an issue which should have been raised on November 18.
16 In addition to its late filing, Armstrong's supplemental
17 opposition is, on its merits, completely frivolous, baseless and
18 devoid of any merit whatsoever. An award of substantial
19 sanctions against Armstrong would be appropriate.

20 II. THE COURT'S ORDER OF DECEMBER 11, 1986
21 RESERVED THE JURISDICTION TO HEAR THIS MOTION

22 C.C.P. section 128(a)(4) provides:

23 Every court shall have the power to do all the
24 following:

25 ***

26 (4) To compel obedience to its judgments, orders, and
27 process, and to the orders of a judge out of court, in
28 an action or proceeding pending therein.

1 In his supplemental opposition, Armstrong contends that this
2 Court lacks jurisdiction to enforce the settlement agreement he
3 entered into, because the agreement was not made a part of the
4 Court's order. The order, however, specifically recites that it
5 was based upon the "consideration of the parties' stipulation for
6 dismissal, the 'mutual release of all claims and settlement
7 agreement' and the entire record herein." Paragraph 20 of the
8 agreement, on page 15, specifically states:

9 Notwithstanding the dismissal of the lawsuit pursuant
10 to paragraph 4 of this agreement, the parties hereto
11 agree that the Los Angeles Superior Court shall retain
12 jurisdiction to enforce the terms of this agreement.

13 The agreement was executed by Armstrong and his attorney, Michael
14 J. Flynn, on December 6, 1986. The order also referred to a
15 companion stipulation for dismissal. Paragraph two of that
16 stipulation provided that:

17 On December 6, 1986, the parties entered into a "mutual
18 release of all claims and settlement agreement."

19 * * *

20 This court shall retain jurisdiction, and may reopen
21 this case at any time for the purpose of enforcing said
22 agreement.

23 In construing the effect of an order, the totality of
24 surrounding circumstances will be examined to determine what was
25 reasonably contemplated by the parties and the court. In re
26 Gideon, 157 Cal.App.2d 133, 320 P.2d 599 (1958); People v. Landon
27 White Bail Bonds, 234 Cal.App.3d 66, 285 Cal.Rptr. 575, 581, 582
28 (1991). When tested by these principals, Armstrong's contention

1 must fail. In a variety of contexts the California courts have
2 repeatedly stated the governing principles for the interpretation
3 of orders. In Roraback v. Roraback, 38 Cal.App.2d 592, 101 P.2d
4 772 (1940) the court said:

5 ... the true measure of an order, ... is not an
6 isolated phrase appearing therein, but its effect when
7 considered as a whole. (citations) In construing
8 orders, they must always be considered in their
9 entirety, and the same rules of interpretation will
10 apply in ascertaining the meaning of a court's order as
11 in ascertaining the meaning of any other writing. If
12 the language of the order be in any degree uncertain,
13 then reference may be had to the circumstances
14 surrounding, and the court's intention in making of the
15 same. (citations) 101 P.2d at 774.

16 In the Roraback case, the court referred to the reporter's
17 transcripts of two hearings to determine the trial court's
18 intention in making the subject order. Similarly, in Cottom v.
19 Bennett, 14 Cal.App.2d 709, 29 Cal.Rptr 715, 720 (1963) the court
20 said that "The rule with respect with orders and judgment is that
21 the entire record may be examined to determine their scope and
22 effect." There, the court held that ambiguities in an
23 interlocutory divorce decree could be resolved by referring to
24 the terms of the order for judgment. Tallman v. Tallman, 29
25 Cal.App.2d, 39, 39 Cal.Rptr. 863, 866 (1964) the court, in
26 construing a prior order, held that it was proper to consider the
27 declaration of an attorney as to the proceedings which transpired
28 in the court's chambers when the original order was made. In so

1 holding, the court cited Roraback v. Roraback, 38 Cal.App.2d 592,
2 101 P.2d 772 (1940) with approval. Similarly, in Western
3 Greyhound Lines v. Superior Court, 165 Cal.App.2d 216, 331 P.2d
4 793 (1958) the court, in construing an order, held that it was
5 proper to refer to the notice of motion, to determine the relief
6 requested.

7 III. SANCTIONS SHOULD BE IMPOSED AGAINST ARMSTRONG
8 FOR CHALLENGING THE VALIDITY OF A STIPULATION
9 EXECUTED BY HIS COUNSEL AND A SETTLEMENT AGREEMENT
10 WHICH HE EXECUTED

11 Armstrong's challenge to the court's jurisdiction is another
12 circumstance in aggravation of his already disgraceful attempt to
13 circumvent a stipulation executed by his counsel, and a
14 settlement agreement which he executed knowingly, freely and
15 voluntarily, for consideration. The foregoing authorities amply
16 demonstrate, that the stipulation and settlement agreement were
17 a part of the court's order of dismissal. Such tactics are a
18 perfect example of gamesmanship in its most odious form. The
19 "supplemental opposition" filed by Armstrong's present attorney
20 is a complete waste of the Court's precious judicial time and
21 resources and should receive the Court's severe condemnation.

22 Dated: December 19, 1991

Respectfully submitted,

BOWLES & MOXON

23 By: Randall A. Spencer
RANDALL A. SPENCER

24 Eric M. Lieberman
RABINOWITZ, BOUDIN, STANDARD,
25 KRINSKY & LIEBERMAN, P.C.

26 WILLIAM T. DRESCHER

27 Attorneys for Plaintiff
28 CHURCH OF SCIENTOLOGY OF
CALIFORNIA

DECLARATION OF RANDALL A. SPENCER

I, Randall A. Spencer, declare:

1. I am one of the attorneys for plaintiff in the above action and I have personal knowledge of the facts herein. If called as a witness, I could and would testify competently to the following facts.

2. I am informed and believe and thereon state that, attached hereto as exhibit A and made a part hereof is a true and exact copy of joint stipulation for dismissal with prejudice of Armstrong's cross-complaint. I am further informed and believe and thereon state that the original of the foregoing stipulation was filed contemporaneously with the Order for dismissal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of December, 1991 in Los Angeles, California.


RANDALL A. SPENCER

EXHIBIT A

1 BRUCE BUNCH
2 CONTOS & BUNCH
3 5855 Topanga Canyon Boulevard
4 Suite 400
5 Woodland Hills, CA 91367
6 (818) 716-9400

7 Attorneys for Cross-Complainant
8 Gerald Armstrong

9 JOHN G. PETERSON
10 PETERSON AND BRYNAN
11 8530 Wilshire Boulevard
12 Suite 407
13 Beverly Hills, CA 90211
14 (213) 659-9965

15 Attorneys for Plaintiff and
16 Cross-Defendant CHURCH OF
17 SCIENTOLOGY OF CALIFORNIA

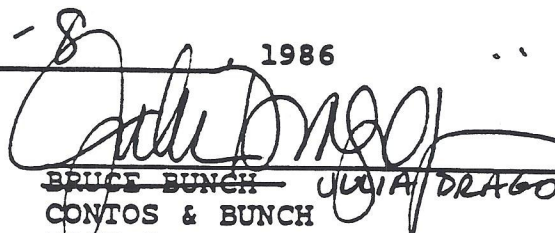
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF LOS ANGELES

20	GERALD ARMSTRONG,)	No. C 420 153
21)	(Severed Action)
22	Cross-Complainant,)	
23)	
24	v.)	JOINT STIPULATION
25)	OF DISMISSAL
26	CHURCH OF SCIENTOLOGY OF)	
27	CALIFORNIA, a California)	
28	Corporation,)	
)	
	Cross-Defendant.)	
)	

29 In satisfaction of valuable and other consideration
30 tendered to the Cross-Complainant by the Cross-Defendant,
31 receipt of which is hereby acknowledged, the parties to the
32 above-entitled action, pursuant to California Code of Civil
33 Procedure § 581 hereby stipulate that said Cross-Complaint be
34 dismissed with prejudice.

1 On December 6, 1986, the parties entered
2 into a "Mutual Release of All Claims and Settlement Agreement."
3 An executed copy of same Agreement has been filed herein under
4 seal and shall be kept under seal by the Clerk of this Court.
5 This Court shall retain jurisdiction, and may reopen this case
6 at any time for the purpose of enforcing said Agreement.

7 DATED: 12-8 1986

8 
9

10 ~~BRUCE BUNCH~~ JULIA DRAGOJENIC
11 CONTOS & BUNCH
12 5855 Topanga Canyon Boulevard
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18 JOHN G. PETERSON
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

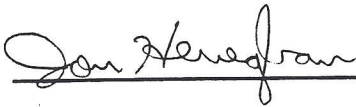
I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On December 19, 1991, I caused the foregoing document described as SUPPLEMENTAL REPLY IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT; DECLARATION OF RANDALL A. SPENCER to be served on interested parties in this action, to the persons at the addresses set forth as follows:

SEE ATTACHED SERVICE LIST

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes, with postage thereon fully prepaid, to be placed in the United States mail at Hollywood, California.

Executed on December 19, 1991 at Hollywood, California.



SERVICE LIST

Barry Van Sickle **HAND SERVED**
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Toby L. Plevin **HAND SERVED**
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